

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of the City of
Moorhead for Determination of Compensation
Related to the Transfer of Service Territory under
Docket Nos. E-275, 134/SA-04-855 and E-275,
134/SA-04-1386

ISSUE DATE: December 3, 2004

DOCKET NO. E-275, 134/SA-04-1699

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On July 16, 2003, the Commission approved a Settlement Agreement between the City of Moorhead (Moorhead or the City) and the Red River Valley Cooperative Power Association (the Cooperative).¹ The Settlement Agreement provided for the transfer of electric service territory from the Cooperative to Moorhead upon the satisfaction of certain conditions. Further, the Agreement provided that compensation for annexations that exceeded 80 acres was to be negotiated. If negotiations failed, the matter was to be brought to the Commission.

On October 13, 2004, the City of Moorhead filed a Petition requesting that the Commission determine the appropriate compensation to be paid to the Cooperative for Moorhead's acquisition of two parcels, each of which exceeds 80 acres in size. The City requested that the matter be referred to the Office of Administrative Hearings for a contested case proceeding.

On October 22, 2004, the Commission approved the transfer of various annexed parcels into the City's service territory under the provisions of the Settlement Agreement,² including the parcels which are the subject of the October 13, 2004 Petition.

¹ ORDER ACCEPTING SETTLEMENT, ADJUSTING SERVICE AREA MAPS, AND DISMISSING CONTESTED CASE, Docket No. E-275, 134/SA-02-1207.

² Dockets E-275, 134/SA-04-1386 and E-275, 134/SA-04-855.

On November 2, 2004, the Department of Commerce (DOC) filed comments.

On November 23, 2004, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. § § 216B.37-.44. The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities service territories under Minn. Stat. § 216B.44.

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due the Cooperative for service rights to these areas. That determination turns on specific facts which are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Commission encourages the Administrative Law Judge to explore with the parties, before or at the time a hearing schedule is determined, the possibility of a mediated settlement.

II. Issues to be Addressed

Minn. Stat. § 216B.44 requires consideration of the following factors in determining compensation in municipal acquisition cases: the original cost of any property acquired by the municipality, depreciation on such property, loss of revenue by the displaced utility, expenses from integration of facilities, and other appropriate factors.

The parties shall address the above issues in the course of contested case proceedings.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Beverly Jones Heydinger. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7606.

B. Hearing Procedure

Controlling Statutes and Rules

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

Right to Counsel and to Present Evidence

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

Discovery and Informal Disposition

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Stuart Mitchell, Public Utilities Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651)296-8662; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

Protecting Not-Public Data

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

Accommodations for Disabilities; Interpreter Services

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

Scheduling Issues

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

Notice of Appearance

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

Sanctions for Non-compliance

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the City of Moorhead, Red River Valley Cooperative Power Association and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Thursday, December 16, 2004 at 9:30 a.m. in the Small Hearing Room of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other

requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings as set forth above.
2. A prehearing conference shall be held on Thursday, December 16, 2004, at 9:30 a.m. in the Small Hearing Room, Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Petition of the City of MPUC Docket No. E-275, 134/SA-04-1699
Moorhead for Determination of Compensation
Related to the Transfer of Service Territory under OAH Docket No.
Docket Nos. E-275, 134/SA-04-855 and E-275,
134/SA-04-1386

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Beverly Jones Heydinger, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7606.

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY:_____